

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 21-CR-287-CVE

JASON SUN BEAR COSTES,

Defendant.

Motion for Leave to Dismiss Without Prejudice

Pursuant to Fed. R. Crim. P. 48(a), the government respectfully moves this Court to dismiss without prejudice the Indictment (Dkt. #2) filed against defendant Jason Sun Bear Costes, without prejudice, in the above-styled cause. In support of its motion, the government advises as follows:

1. In 2017, the state court sentenced Defendant to 25 years imprisonment. On March 15, 2021, Defendant sought post-conviction relief, arguing that his state convictions must be vacated based upon *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2015). A grand jury returned an Indictment, charging him with assault with intent to commit murder in Indian Country, Assault with a Dangerous Weapon with Intent to do Bodily Harm in Indian Country and Robbery in Indian Country, on June 21, 2021.

2. Since then, the Oklahoma Court of Criminal Appeals decided *State ex rel. Matloff v. Wallace*, ---P.3d ---, 2021 WL 3578089 (Aug. 12, 2021), holding that *McGirt* does not apply retroactively to void a final state conviction, as *McGirt* itself suggested

was likely. 140 S.Ct. 2452, 2479 & n. 15.

3. On October 7, 2021, the Tulsa County District Court denied Defendant's application for post-conviction relief under *McGirt*. Order Deny. Def.'s Appl. for Post

4. The government's request for leave to dismiss without prejudice the pending Indictment against Cheater in the interest of justice.

Wherefore, premises considered, plaintiff prays that the instant motion be granted, and for all other proper relief.

Dated this 29th day of March 2022.

CLINTON JOHNSON
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